

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 176 of 2000

in

SPECIAL CIVIL APPLICATION No 5932 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJGIRI CHANDRAGIRI

GOSWAMI

Versus

SPECIAL RECOVERY OFFICER

Appearance:

1. LETTERS PATENT APPEAL No. 176 of 2000
MR MG NAGARKAR for Appellants
MR SK PATEL AGP for Respondent No. 2
MR HD VASAVADA for Respondent No. 3
MR MK VAKHARIA for Respondent No. 6
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CORAM : MR.JUSTICE J.M.PANCHAL

and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By means of filing this appeal under clause 15 of the Letters Patent, the appellants who are 42 in number, have challenged legality of order dated April 5, 2000 rendered by the learned Single Judge in Special Civil Application No. 5932 of 1998 whereby the petition came to be dismissed in absence of learned counsel for the appellants.

2. Ground No.5 mentioned in the memorandum of appeal indicates that time and again the above-numbered petition was notified for hearing before Mr. Justice S.K. Keshote but as Mr. Justice Keshote was not available on April 5, 2000, a notification was issued by the High Court mentioning that those learned advocates who had any urgency in the matter should mention before Mr. Justice Pradip Kumar Sarkar for urgent orders and on inquiry the learned counsel for the appellants had come to know that only urgent matters were to be taken up by Mr. Justice Sarkar, as a result of which the learned counsel for the appellants could not remain present when the matter was called out for hearing before Mr. Justice Sarkar. It is also averred in ground No.5 that as the matter was called out the learned counsel for the respondents had remained present and after hearing the learned counsel for the respondents, the petition was dismissed by the impugned order.

3. Heard the learned counsel for the parties.

4. In view of the notification which was issued by the High Court, we are of the opinion that the learned counsel for the appellants was justified in not remaining present before the Court of Mr. Justice Sarkar when the matter was called out as the matter was not mentioned by him for urgent orders. The impugned order makes it manifest that it was passed in absence of the learned counsel for the appellants.

5. Having regard to the facts of the case, we are of the opinion that interest of justice will be served if the impugned order is set aside and office is directed to notify the petition for hearing before appropriate Court as early as possible.

6. For the foregoing reasons, the appeal succeeds. Order dated April 5, 2000 rendered by the learned Single Judge in Special Civil Application No. 5932 of 1998 is set aside. The office is directed to notify Special Civil Application No. 5932 of 1998 as early as possible and without any avoidable delay as according to Mr. H.D. Vasavada, learned counsel for the respondent No.3, huge amount of respondent No.3 bank is blocked because of the pendency of litigation in the High Court. The appeal accordingly stands allowed with no order as to costs.

7. It is clarified that the interim relief which was operating in Special Civil Application No. 5932 of 1998 will continue to operate till further orders and it will be open for the learned counsel for the respondents to move the Court for vacation of the said relief.

2.12.2000 (J.M. Panchal, J.) (A.M. Kapadia, J.)

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